U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-W-K

DATE: JAN. 17, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an industrial hygiene researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence.

Upon review, we will deny the motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

[1] *See Matter of C-W-K-*, ID# 330051 (AAO June 13, 2017).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," *Dhanasar* stated that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Background

The Petitioner intends to continue his work as a researcher and teacher with [redacted] He explains that he aims to further research relating to "the anticipation, recognition, control, and prevention of the causes of silicosis" a disease described as "the most common occupational lung disease caused by inhalation of respirable crystalline silica (RCS)." He describes how he aims to help protect the American worker from developing silicosis by improving the occupational health standards from silica exposure and continuing to expand his research applying [redacted] techniques to wood dust sampling to influence worker safety policies. In addition to his research activities, the Petitioner claims that he will continue his mentorship of students in the [redacted] at [redacted]

In denying the Petitioner's appeal, we found that he had met the first prong of the framework set forth in *Dhanasar* based on his proposed research, but that he had not satisfied the second or third prong. The Petitioner now files the current combined motion to reopen and reconsider claiming that he provided sufficient evidence establishing that he has met the prongs of the *Dhanasar* framework. He also provides additional evidence, which we address below.

B. Motion to Reconsider

A motion to reconsider is based on an *incorrect application law or policy*. 8 C.F.R. § 103.5(a)(3). A request to reanalyze documentation without showing how we incorrectly applied law or policy does not meet the requirements of a motion to reconsider.

In his motion to reconsider, the Petitioner asserts that our appellate decision, with regard to the second prong of the *Dhanasar* framework, was based on an incorrect application of law or policy, and that his previously submitted evidence established eligibility. He summarizes his documentary evidence for the regulatory criteria and requests that we review his documentation again, pointing to two projects that he avers we did not sufficiently consider. However he does not specifically explain how we incorrectly applied the relevant law, nor has he identified documentation that we overlooked or misinterpreted.

Here, we find no error in our previous determination. In our prior decision, we analyzed the evidence relating to the Petitioner's research projects, including those noted on motion, and found that the record did not adequately document the claimed significance of his work. We therefore determined that the record did not show a record of success or progress in his field, or a degree of interest in his work from relevant parties, rising to the level of rendering him well positioned to advance his proposed research endeavor to improve the industry safety standards of workers exposed to harmful materials. For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. On motion, the Petitioner

again summarizes his research accomplishments and maintains that they well position him to advance his proposed endeavor. However, he does not cite to any relevant law, regulation, or precedent establishing that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision.

With regard to the third prong of the *Dhanasar* framework, the Petitioner emphasizes the potential benefits of his work. He does not, however, provide sufficient explanation or information to support his claim that our previous determination on this issue was erroneous.

C. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

In our previous decision, we noted that the Petitioner meets the first prong of the *Dhanasar* framework based upon his proposed work conducting occupational hygiene research. However, we limited our finding of national importance to his research activities. We noted that his proposed endeavor of mentoring and instructing high school students in the would not impact environmental health education more broadly. Rather, the record indicates that his work will be limited to the students at the institution where he serves. Accordingly, we found that his proposed teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.

In the motion to reopen, the Petitioner offers copies of additional promotional literature from the that highlights the accomplishments of a sampling of students from the program including a student who presented his research at a national conference, to support his contention that his teaching activities with the should also be considered under the "national importance" element of the first prong. However, the evidence submitted does not explain how these students' accomplishments show that his work would serve to impact the field of environmental health education more broadly or otherwise support his claim that his work with this high school program is of national importance.

Also in the motion to reopen, regarding the issue of whether he is well positioned to advance his proposed research endeavor under the second prong of the *Dhanasar* framework, the Petitioner reiterates his contention that he "found a software inconsistency" between two spectrometers which resulted in different conversion equations in studies, and reported it to their manufacturer,

In our prior decision, we found that he had not explained why this finding is significant or whether it impacted subsequent studies, and that a letter from which had been provided as supporting evidence, did not mention the Petitioner. On motion, he offers copies of email communications confirming that he worked to identify the inconsistency, and he states that his work was "important to the researchers to study quantitative analysis." However, he does not offer additional evidence regarding his contribution or its significance.

In addition, the Petitioner submits new evidence to support his contention that his master's thesis work concerning landfill and wastewater treatment in South Korea was utilized to stabilize a large municipal treatment plant. Specifically, he provides a copy of portions of the final report of the metropolitan landfill leachate treatment project now known as ' However, this report does not explain the Petitioner's role in the project or document that his work was central to stabilization of the landfill. As such, we cannot conclude that the newly submitted evidence sufficiently renders the Petitioner well positioned to advance his proposed endeavor.

Finally, the Petitioner's motion to reopen does not include evidence relating to the third prong of the *Dhanasar* framework. Accordingly, he has not overcome our finding that on balance, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

In this matter, the motion to reconsider does not demonstrate that our previous decision was incorrect and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of C-W-K-* , ID# 787048 (AAO Jan. 17, 2018)